2012 IL App (1st) 130627-U

FIFTH DIVISION
December 27, 2013

1-13-0627 and 13-0628, consolidated

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

KEN ZUREK, Petitioner/Appellant pro se, v. ILLINOIS STATE BOARD OF ELECTIONS, and FRIENDS OF BARRETT F. PEDERSEN, Respondents/Appellees.	)	Appeal from the Illinois State Board of Elections 12 CD 137 and 13 CD 001

JUSTICE McBRIDE delivered the judgment of the court.
Justices Palmer and Taylor concurred in the judgment.

O R D E R

HELD: On direct administrative review, administrative agency affirmed where record supported its conclusions regarding candidate political committee's compliance with public reporting statute.

¶ 1 This is a consolidated direct appeal in which petitioner pro se Ken Zurek, a resident of Franklin Park, Illinois, seeks reversal of orders entered by respondent Illinois State Board of Elections (hereinafter Board) finding that no action was required on two complaints Zurek filed against the respondent Friends of Barrett F. Pedersen, which is a candidate political committee

that supports the reelection of the incumbent democratic committeeman of Leyden Township (hereinafter committee).[1] In the first of the consolidated appeals, 1-13-0627, Zurek contends the Board erroneously determined that sections of the Illinois Election Code which require fines and disgorgement of contributions do not apply to the circumstances alleged in Zurek's complaint. In appeal 1-13-0628, Zurek contends the Board erroneously determined that a section of the Election Code which requires a political committee to designate itself as one of five types does not prevent a committee from changing its designation.

¶ 2 Zurek filed the two complaints at issue on November 15, 2012, and January 30, 2013, respectively. When a complaint is filed, a closed preliminary hearing is conducted by a hearing officer "to elicit evidence on whether the complaint was filed on justifiable grounds and has some basis in fact and law." 26 Ill. Adm. Code § 125.245 (hearing officer shall be appointed and closed preliminary hearing shall be ordered), 26 Ill. Adm. Code § 125.252 (scope of preliminary hearing); 10 ILCS 5/9-21 (2010) (upon receipt of complaint, a closed preliminary hearing shall be conducted to determine whether the complaint has been filed on justifiable grounds). The evidence presented at the closed preliminary hearing and the hearing officer's recommended resolution of the case are then given to the general counsel for the Board. 26 Ill. Adm. Code § 125.253 (responsibilities of the general counsel). The general counsel makes his or her own recommendation to the Board. 26 Ill. Adm. Code § 125.253. The Board must decide whether

[1] According to Zurek, Pedersen is also an Illinois attorney, the village president (or "mayor") of Franklin Park, and leads the Democratic Party of Leyden Township in his capacity as the chairman of that political party committee.

the complaint was filed on justifiable grounds. 26 Ill. Adm. Code § 125.262(a). "If the Board determines that the complaint was filed on justifiable grounds, and if the respondent is unwilling to take action necessary to correct the violation or refrain from the conduct giving rise to the violation, it shall order a public hearing ***." 26 Ill. Adm. Code § 125.262(a). "If the Board fails to determine that the complaint has been filed on justifiable grounds, it shall dismiss the complaint without further hearing." 10 ILCS 5/9-21 (West 2010); *Cook County Republican Party v. Illinois State Board of Elections,* 232 Ill.2d 231, 239-40, 902 N.E.2d 652, 658 (2009). A dismissed complaint can be appealed directly to the appellate court. 10 ILCS 5/9–22 (West 2010); *Sorock v. Illinois State Board of Elections*, 2012 IL App (1st) 112740, ¶ 9, 975 N.E.2d 313.

¶ 3 In Count I of the first complaint that was dismissed, Zurek alleged that the committee known as Friends of Barrett F. Pedersen filed Form D-2 quarterly reports of campaign contributions and expenditures for the first nine months of 2012 which were not signed by the committee's treasurer, in violation of section 9-11(e) of the Illinois Election Code. 10 ILCS 5/9-11(e) (West 2010) (hereinafter Election Code) ("each report shall be verified, dated, and signed by either the treasurer of the political committee or the candidate on whose behalf the report is filed"). At the preliminary hearing, the committee responded that the signator of the report was the committee's current treasurer and that the committee had neglected to update its Form D-1 statement of organization with that information. The committee then updated its Form D-1, however, Zurek contended section 9-3(a) of the Election Code mandated a fine of $50 per business day for the untimely revision of the Form D-1 ("Every political committee shall file ***

a statement of organization within 10 business days of the creation of the committee," "change in information previously submitted in a statement of organization shall be reported *** within 10 days following that change," and "[t]he Board shall impose a civil penalty of $50 per business day upon political committees for failing to file or late filing of a statement of organization."). 10 ILCS 5/9-3(a) (West 2010). In accordance with the recommendations of the hearing officer and the board's general counsel, the Board ruled that section 9-3(a) did not apply to the untimely filing of changes to the existing Form D-1. The allegations Zurek set out in Count II of his complaint are not at issue on appeal. In Count III, Zurek alleged in part that a $250 contribution from a local chapter of the Knights of Columbus listed the residential address of the individual Andrew Smolen, in violation of section 9-25 of the Election Code, which prohibits anonymous contributions, contributions in the name of another person, or knowing acceptance of such contributions (10 ILCS 5/9-25 (West 2010)), and, therefore the $250 must escheat to the State. At the preliminary hearing, the committee tendered the affidavit of its treasurer indicating he received a $250 personal check from Smolen to purchase ad space for the Knights of Columbus in a fund raising pamphlet, and that the treasurer had mistakenly assumed the contribution was from the organization instead of the individual whom he knew to be the local chapter's finance manager. Adhering to the recommendations of the hearing officer and general counsel, the Board then ordered the committee to file an amended D-2 quarterly report to correctly identify Smolen as the contributor. Thus, with respect to the pleading at issue in Appeal 1-13-0627, the Board found a lack of justifiable grounds for the claims and dismissed the pleading.

¶ 4 Appeal 1-13-0628 concerns an amended complaint that Zurek filed on January 30,

2013, alleging in Count II that it was contrary to sections 9-2(a) and 9-2(b) of the Election Code for the political committee known as Friends of Barrett F. Pedersen to have amended its Form D-1 statement of organization on January 25, 2013, to indicate it was changing its designation from that of a political action committee to that of a candidate political committee. 10 ILCS 5/9-2(a) (West 2010) ("Every political committee shall be designated as a (i) candidate political committee, (ii) political party committee, (iii) political action committee, (iv) ballot initiative committee, or (v) independent expenditure committee").

¶ 5 According to Zurek, the committee was " 'locked' " to the designation it chose for itself when it formed on January 20, 2000, and the purported change some 13 years later was "void and of no effect." Zurek based these conclusions on his contention that unless there was specific language in the statute allowing a committee to change its designation, there was no authority to change, and he pointed out that the contribution limits for the various types of committees were different and could be circumvented by revising a committee's designation. The defendant committee responded there was no language in section 9-2 prohibiting the committee from changing its designation. Also, the committee had improperly designated itself as a political action committee, while in fact always operating as a candidate political committee (as signified by the name of an individual candidate in the organization's title), which was an error that occurred because the person filing the original Form D-1 did not understand the Election Code. The committee said that it not only corrected its own Form D-1, but the organizers had formed a new, separate political party committee to support various candidates for Village offices, such as Petersen's individual candidacy for the office of Village President

(commonly known as the mayoral position), and that these corrective steps were taken to ensure full compliance with Illinois law.

¶ 6 The hearing officer recommended that the Board find that the Election Code did not prohibit a political committee from changing its designation and thus, the complaint was not filed on justifiable grounds. The general counsel adopted this recommendation. Before the Board, the committee stated that it had taken additional corrective steps to divest itself of contributions in support of Pedersen's candidacy for the mayoral position, namely (1) writing letters to past donors to advise them of the committee change and offer to return contributions, (2) transferring funds to the new political party committee, and (3) returning any new contribution checks that were received before the change was publicized. Counsel estimated that less than $2,000 was transferred from one committee to the other. After considering all the materials submitted by the parties and the recommendations, the Board found that no further action by the Board was required because of the remedial action taken by the committee. The Board found a lack of justifiable grounds for Zurek's allegation that the change of designation violated the Election Code and it dismissed his amended complaint.

¶ 7 Zurek appealed from the Board's decisions and his two appeals have been consolidated. He asks us to determine whether the Board properly interpreted the Election Code. The Board filed a response brief which was adopted by the committee. Zurek's reply brief was due more than two months ago on October 9, 2013, however, he neither filed a brief nor asked for additional time to prepare one, and so we proceed without benefit of his additional arguments.

¶ 8 Where the pertinent facts are admitted or established, but there is a dispute as to whether the governing legal principles were interpreted correctly by the administrative agency, then an appeal presents a purely legal question and is subject to the *de novo* standard of review. *Goodman v. Ward*, 241 Ill.2d 398, 406, 948 N.E.2d 580, 585 (2011). The *de novo* standard calls for a nondeferential and independent analysis. *Goodman*, 241 Ill.2d at 406, 948 N.E.2d at 585. The primary rule of statutory interpretation is to determine and give effect to the legislature's intent. *Bonaguro v. County Officers Electoral Board*, 158 Ill. 2d 391, 397, 634 N.E.2d 712, 714 (1994). We are to discern that intent by considering the words that were used in the statute, and then evaluate the language in context, rather than as isolated words or phrases, and harmonize the various provisions with each other. *Bonaguro*, 158 Ill. 2d at 397, 634 N.E.2d at 714.

¶ 9 Zurek first contends that use of the word "shall" in section 9-3(a) of the Election Code is a mandate that the Board fine the committee for taking more than 10 days to amend its Form D-1 statement of organization to disclose the name of its new treasurer, and that we should direct the Board to impose a fine. 10 ILCS 5/9-3(a) (West 2010). He contends the Board erred in interpreting the penalty language of section 9-3(a) as applying only to untimely-filed original Form D-1 statements of organization and not to untimely-filed updates. He contends the Board's construction rendered statutory language "meaningless and superfluous" in violation of one of the basic principles of statutory construction. *Kraft v. Edgar*, 138 Ill. 2d 178, 189, 561 N.E.2d 656, 661 (1990) (indicating a statute should be interpreted so that no word or phrase is rendered meaningless or superfluous).

¶ 10 In our opinion, Zurek's argument is easily resolved by reading the pertinent language

in context, rather than as the sentence fragments we used above to summarize the proceedings and that Zurek relies upon to reach his conclusions. Zurek's argument fails because the express language of the Election Code requires that both original Form D-1 statements of organization and subsequent changes be filed with the Board within 10 days, but the express language provides a late-filing penalty for Form D-1 statements only, not for their untimely revisions:

> "(a) Every political committee shall file with the State Board of Elections a statement of organization within 10 business days of the creation of such committee, except any political committee created within the 30 days before an election shall file a statement of organization with 2 business days in person, by facsimile transmission, or by electronic mail. Any change in information previously submitted in a statement of organization shall be reported, as required for the original statement of organization by this Section, within 10 days following that change. A political committee that acts as both a state political committee and a local political committee shall file a copy of each statement of organization with the State Board of Elections and the county clerk. The Board shall impose a civil penalty of $50 per business day upon political committees for failing to file or late filing of a statement of organization. Such penalties shall not exceed $5, 000, and shall not exceed $10,000 for statewide office political committees. There shall be no fine if the statement is mailed and postmarked at least 72 hours prior to the filing deadline.
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> * * *

(b) The statement of organization shall include:

(1) the name and address of the political committee and the designation required by Section 9-2;

* * *

(4) the name, address, and position of the committee's principal officers, including the chairman, treasurer, and officers and members of its finance committee, if any[.]"

¶ 11 The sentence authorizing fines is limited to the failure to file or the late filing of a statement of organization and does not refer to fines for "any change in information previously submitted." The legislature may have intentionally limited the penalties to initial disclosures because it did not consider revisions to be as time-sensitive as the original information, or the legislature may have inadvertently curtailed the scope of the penalty language. But it makes no difference here why the statute says what it says. The statute plainly says there is a penalty for failing to file or late filing of an initial D-1 statement; it does not say there is a penalty for late filing of any change to the previous form. The role of the courts is to apply the language as it was written, and we may not, under the guise of construction, annex new provisions, supply omissions, remedy defects, substitute different provisions, add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of language employed by the legislature. *Superior Structures Co. v. City of Sesser*, 292 Ill. App. 3d 848, 852, 686 N.E.2d 710, 713 (1997). Furthermore, the legislature is presumed to be aware of how courts have interpreted a statute and will amend this statute if it intended a different construction.

Provena Health v. Illinois Health Facilities Planning Board, 382 Ill. App. 3d 34, 45, 886 N.E.2d 1054, 1065 (2008). We find the Board correctly interpreted the statute and did not err in dismissing Zurek's claim.

¶ 12 Zurek next contends the Board erred in failing to find a lack of justifiable grounds for his allegation that Smolen's contribution to the committee violated section 9-25 of the Election Code. 10 ILCS 5/9-25 (West 2010). He contends Smolen's donation was in violation of section 5/9-25 of the Election Code because it was reported as contribution from the local Knights of Columbus, and that we should direct the Board to tell the committee to forward the $250 to the State. 10 ILCS 5/9-25 (West 2008). He contends the contribution was either an anonymous contribution or a contribution made by one person in the name of another person, and must escheat to the State. 10 ILCS 5/9-25 (West 2010).

¶ 13 Relevant to his argument is the fact a political committee which accepts or expends more than $3,000 during any 12–month period must periodically report its contributions and expenditures. 10 ILCS 5/9–1.8 (West 2010) (defining political committees and creating the $3,000 reporting threshold); 10 ILCS 5/9–6 (West 2010) (requiring every contributor to give the political committee's treasurer a detailed account of his or her contribution); 10 ILCS 5/9–7 (West 2010) (requiring treasurer to create and preserve records); 10 ILCS 5/9–10 (West 2010) (requiring treasurer to file reports with the Board); 10 ILCS 5/9-11 (West 2010) (indicating that reports required by section 9-10 of the Election Code "shall be verified, dated and signed by either the treasurer of the political committee or the candidate on whose behalf the report is filed"). Also, the statutory scheme is intended to preserve the integrity of the electoral process by

requiring full public disclosure of the sources and amounts of campaign contributions and expenditures. *Sorock v. State Board of Elections*, 2012 IL App (1st) 112740, ¶ 2, 975 N.E.2d 313. The legislature intended for Illinois citizens to be informed of the total contributions received and expended by a political committee, the names of significant contributors and of individuals to whom a political committee is indebted. *Sorock*, 2012 IL App (1st) 112740, ¶ 2, 975 N.E.2d 313.

¶ 14 Zurek's argument fails for two reasons. First, by Zurek's own account, the contribution was not anonymous and under the statute he cites, only "Anonymous contributions shall escheat to the State." 10 ILCS 5/9-25 (West 2010). Second, the record shows that Smolen's contribution was not made by one person in the name of another, it was made by Smolen in Smolen's name, but the committee mistakenly reported it as a contribution from the Knights of Columbus, which is not a violation of section 5/9-25 of the Election Code. 10 ILCS 5/9-25 (West 2010). There is no evidence that Smolen or the Knights of Columbus made any representation that the contribution was from the Knights of Columbus. Rather, at the preliminary hearing, the committee submitted the affidavit of its treasurer, Andres Ybarra, regarding the source of the $250 contribution. As we summarized above, the treasurer indicated he made a mistake on the quarterly disclosure form:

> "14. The disclosure of the "Knights of Columbus" on the 03/31/12 Quarterly Disclosure was disclosed due to an unintentional and unrecognized error. ***
>
> 15. When I filed the 03/31/12 Quarterly Disclosure, I incorrectly assumed

> that Andy Smolen had purchased the above stated advertisement space at the direction of the local chapter of Knights of Columbus, but I have since spoken with Andy Smolen and he has informed me that he purchased the advertisement space of his own accord without direction or reimbursement from the local chapter of Knights of Columbus."

¶ 15 Based on the record presented, the hearing officer recommended that the Board find that the contribution was from Smolen and order the committee to so amend its Form D-2 contribution report. See 10 ILCS 5/9-11(e) (indicating a political committee may amend a report filed under sections 9-10(a) or 9-10(b) and authorizing the Board to impose a fine and promulgate rules to enforce this subsection). The committee did amend its D-2 form and the Board found a lack of justifiable grounds for Zurek's complaint.

¶ 16 Thus, there is no basis for Zurek to contend the donation was either anonymous or made in the name of another. It was tendered by Smolen as a donation from Smolen but was misreported by the committee as a donation from the Knights of Columbus. That mistaken report has been corrected. Section 5/9-25 does not require or authorize fines for mistakes. 10 ILCS 5/9-25 (West 2010). The statute Zurek relies upon does not apply to the facts at hand. Accordingly, we find the Board did not err when it did not proceed to a public hearing on Zurek's allegation and that his appeal regarding the $250 contribution borders on being frivolous.

¶ 17 Zurek's last contention is that the legislature directed all political committees to designate themselves as one of five different types (10 ILCS 5/9-2(a) (West 2010)), but there is no statutory language that authorizes a political committee to "switch" or "flip" its designation

from one type to another as this committee did when it changed its designation from that of political action committee to candidate political committee. Zurek contends that because the contribution limits for the various committees are different (10 ILCS 5/9-8.5 (West 2010)) and the election cycles may be different (10 ILCS 5/9-1.9 (West 2010), an *ad hoc* change to a committee's designation "can have the effect of undermining" the laws regarding campaign contributions. He contends we should reverse the Board's dismissal of his complaint about the committee's revision of its status.

¶ 18 Zurek, however, fails to cite any statutory language addressing this particular situation. There is no language specifying that a political committee may revise its official designation *ad hoc* or that the proper procedure is to dissolve and reform as a different entity. We further conclude, therefore, that this committee's revision cannot be construed as a violation of the Election Code. Furthermore, this committee took steps to ensure full disclosure of its revision. The record in this case shows that this committee took remedial steps when it changed its designation, including (1) writing letters to past donors to advise them of the committee change and offer to return their contributions, (2) transferring remaining funds from the old committee to the new committee, and (3) adopting a policy of informing new donors of the recent change in committee status. Also, the Board specifically found that because of the remedial actions taken by the committee, no further action was required on Zurek's complaint. Those remedial steps are consistent with the legislature's intent that the integrity of the electoral process be preserved. See *Sorock*, 2012 IL App (1st) 112740, ¶ 2, 975 N.E.2d 313 (regarding motivation for the Election Code). For these reasons, we find the Board did not err when it did

not proceed to a public hearing on this complaint. The dismissal was appropriate.

¶ 19 Finding no error, we affirm the judgment of the Board.

¶ 20 Affirmed.